

### III. Damage Incurred by a Controlled Enterprise:

1. A claim that a Contracting Party is in breach of this Agreement, and that an enterprise that is a juridical person incorporated or duly constituted in accordance with applicable laws of that Contracting Party has incurred loss or damage by reason of, or arising out of, that breach, may be brought by an investor of the other Contracting Party acting on behalf of an enterprise which the investor owns or controls directly or indirectly. In such a case:
  - (a) any award shall be made to the affected enterprise;
  - (b) the consent to arbitration of both the investor and the enterprise shall be required;
  - (c) both the investor and enterprise must waive any right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind; and
  - (d) the investor may not make a claim if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that it has incurred loss or damage.
2. Notwithstanding paragraph 1(a) above, where a disputing Contracting Party has deprived a disputing investor of control of an enterprise, the following shall not be required:
  - (a) a consent to arbitration by the enterprise under 1(b); and
  - (b) a waiver from the enterprise under 1(c).